

TRIAL COURT RESEARCH AND IMPROVEMENT CONSORTIUM

Report on the Program to Assist Self Represented Litigants of the Montgomery County Circuit Court of the State of Maryland

Final Report

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Table of Contents

INTRODUCTION AND OVERALL CONCLUSIONS.....	1
OVERALL HISTORY AND DESCRIPTION OF PROGRAMS	2
RESULTS OF STAKEHOLDER RESEARCH AND DATA GATHERING	9
PROGRAM STRENGTHS.....	15
SPECIFIC PROGRAMMATIC CHARACTERISTICS	17
GOAL ALIGNMENT	18
CLIENT GROUPS	18
STAKEHOLDERS.....	18
EMERGING PRACTICES	19
STATISTICAL AND DATA ANALYSIS.....	21
EVALUATION	21
STRATEGIC PLANNING.....	22
OVERALL ASSESSMENT	22
RECOMMENDATIONS	23
CREATE STATEWIDE DEFINITION OF LEGAL INFORMATION V. LEGAL ADVICE	23
ADDRESS SRL NEEDS IN OTHER CASE TYPES	24
TRAIN JUDGES ON DEALING WITH SRLS IN THE COURTROOM.....	24
REVIEW FORMS, INSTRUCTIONS AND CHECKLISTS FOR READABILITY, THE NEED TO ADD NEW FORMS, AND TRANSLATION INTO LANGUAGES OTHER THAN ENGLISH	24
REVIEW AND REVISE STATE FORMS TO INCLUDE SPECIFIC WARNINGS ABOUT LOSS OF SPECIFIC IMPORTANT LEGAL RIGHTS, E.G., ALIMONY, PENSIONS, MONETARY AWARDS, AND THE DIVISION OF MARITAL PROPERTY	25
REVIEW THE STATEWIDE MECHANISM FOR PUBLICIZING AND DISTRIBUTING NEW AND UPDATED FORMS .	25
CONSIDER REQUIRING ATTENDANCE AT WORKSHOP FOR CASES WITH PROPERTY OR CONTESTED CUSTODY ISSUES; DEVELOP VIDEOTAPE AND ON-LINE WORKSHOPS THAT SATISFY ATTENDANCE REQUIREMENT.....	26
WORK WITH STATE BAR, MLAN AND OTHER STAKEHOLDERS TO DEVELOP PROCEDURES TO ALLOW LIMITED SCOPE REPRESENTATION TO ENCOURAGE ATTORNEYS TO TAKE CASES FOR LITIGANTS WITH LIMITED RESOURCES	26
REWRITE PROGRAM DEFINITION AND MATERIALS TO ELIMINATE ATTORNEY-CLIENT RELATIONSHIP BETWEEN STAFF AND LITIGANTS.....	27
CHANGE NAME OF PROJECT TO A TERM OTHER THAN “PRO SE”	29
REVIEW COURT FORMS, LETTERS, INSTRUCTIONS, AND CHECKLISTS FOR READABILITY AND TRANSLATE INSTRUCTIONS INTO LANGUAGES OTHER THAN ENGLISH.....	29
INSTITUTE REGULAR MEETINGS WITH OTHER LEGAL SERVICES PROVIDERS TO SHARE INFORMATION	30
EXPAND ROLE OF PRO SE PROJECT TO INCLUDE MATERIALS TO INFORM SRLs WITH CONTESTED HEARINGS OF THE ISSUES TO BE ADDRESSED AND THE SORTS OF EVIDENCE NEEDED TO PROVE THEM	30
EXPAND SERVICES PROVIDED TO OTHER CASE TYPES, INCLUDING GUARDIANSHIP, ADOPTION, NAME CHANGES, AND PERHAPS RESPONDENTS IN DOMESTIC VIOLENCE CASES	31

PROVIDE ADDITIONAL RESOURCES FOR THE PROGRAM.....	31
PROVIDE A PRINTER FOR SHELLEY AND ELINOR.....	31
CONSIDER TOOLS TO ASSIST AT SCHEDULING CONFERENCES SUCH AS CALENDARS AT COUNSEL TABLE, NEW FORM FOR DATES WITH DESCRIPTION OF SERVICES BESIDE THEM, REFERRAL SLIPS FOR PRO SE PROJECT WITH NOTATION OF REASON FOR REFERRAL	32
DISTRIBUTE TO JUDGES, MASTERS AND FACILITATORS A FORM ON COLORED PAPER TO REQUEST IMMEDIATE ASSISTANCE FOR A PARTICULAR LITIGANT, FOR THE PURPOSE OF COMPLETING A PROCEEDING ON THE SAME DAY	32
PROVIDE QUIET, MORE PRIVATE SPACE FOR PROGRAM STAFF IF POSSIBLE; CONTIGUITY WITH MASTERS HEARING ROOMS IS PARAMOUNT	33
BETTER SIGNAGE ON 2ND FLOOR INCLUDING MAP, LISTING HEARING ROOM NUMBERS FOR MASTERS ON SCREEN	33
FOLLOW THROUGH WITH CURRENT PLANS FOR ENHANCED CASE MANAGEMENT FOR SRL CASES.....	33
ENHANCE AVAILABILITY OF AUTOMATION TO LITIGANTS THROUGH LINK TO STATE COURT WEBSITE AND PEOPLES LAW LIBRARY	34
PROVIDE AN OPPORTUNITY FOR PRE-FILING MEDIATION.....	34
CONSIDER CONSISTENT STAFFING OF FACILITATION PROGRAM (WHICH MIGHT PROVIDE PRE-FILING MEDIATION).....	34
WRITTEN POLICY ON WHAT IS AN EMERGENCY TO HELP PROVIDE BACK UP FOR PROGRAM	35
DEVELOP PROCEDURE TO ENSURE THAT SRLS WHO HAVE REACHED PARENTING AGREEMENT IN MEDIATION SIGN IT (POSSIBLY A CLAUSE ALLOWING EITHER PARTY TO VOID IT BY FILING WITH THE COURT A WRITTEN RESCISSION WITHIN 30 DAYS).....	35
CONSIDER INCLUDING A SENTENCE IN THE PARENTING AGREEMENT REQUESTING THAT THE COURT ENTER A CONSENT ORDER INCORPORATING THE AGREEMENT.....	36
CONCLUSION	36
APPENDIX A: SUGGESTED FORMAT FOR SCHEDULING CONFERENCE REPORT	38
APPENDIX B: MEMORANDUM ON ATTORNEY-CLIENT RELATIONSHIPS	39
APPENDIX C: “MAY I HELP YOU? LEGAL ADVICE V. LEGAL INFORMATION” JUDICIAL COUNCIL OF CALIFORNIA, 2003	42

Introduction and Overall Conclusions

This Report is an evaluation of the programs to assist self represented litigants in the Circuit Court of Montgomery County, Maryland. The Report was prepared as part of the Trial Court Research and Improvement Consortium *Pro Se* Assessment Project, funded in part by the State Justice Institute,¹ and uses an Executive Assessment Tool developed by the Project. This individual evaluation is intended to provide concrete feedback and suggestions to the management of the Montgomery County Circuit Court, to be part of an assessment of the Family Law Pro Se Assistance Projects of the Maryland judicial branch, and to be part of creating a general picture of *pro se* litigants and *pro se* innovation throughout the country produced from similar assessments in nine courts in five states.²

A comparison of the performance of programs in Montgomery County with those in Hennepin County, Minnesota; Miami, Florida; Phoenix, Arizona; and in Harford, Prince Georges, and Worcester Counties and in Baltimore City in Maryland shows that litigants make significant use of the services in Montgomery County and rate the services provided, and the performance of the court as a whole, very highly.

The county has one primary program to assist self represented litigants – the Pro Se Project staffed by three full-time attorneys and one paralegal. The paralegal and one attorney are fluent in Spanish and spend significant amounts of their time assisting Spanish-speaking clients. The program provides full time services five days per week, but only on a walk-in basis in the courthouse. The program provides services valued highly by the litigants – both at the time of delivery of services and after court hearings. Litigants also rate highly the performance of the judges and staff in court hearings and trials. Both judges and in-court observers rate positively the ability of self represented litigants to handle their cases in the courtroom.

A bare majority of lawyers surveyed support the court's program; however, the leadership of the family law bar are heavily involved in and supportive of the program.

¹ The Project is funded by SJI grant no SJI-03-N-104. Opinions expressed are those of the authors and not of the State Justice Institute.

² This evaluation was conducted by John M. Greacen, an independent consultant, and by Bonnie Rose Hough, supervising attorney at the Center for Center for Families, Children & the Courts of the California Administrative Office of the Courts, where she is responsible for California's programs to assist self represented litigants, including the judiciary's self help website and family law forms.

The two evaluators spent five working days at the court. The observations and stakeholder interviews they conducted were supplemented by extensive staff-conducted surveys of litigants, judges, court staff, and users of the programs to assist self represented litigants. Court observations were also conducted by judges and court staff.

Two thirds of the judges and masters are satisfied with the court's program; however, there is some ambivalence about the program from judges.

All agree that the court is providing useful and effective services to poor litigants with simple cases that involve no property and in which there is no conflict over custody of children. There is disagreement about whether the court can or should provide services addressing the remainder of the family caseload.

The court provides a variety of services for litigants involved in family law matters and for their children. The Pro Se Project maintains excellent relationships with the staff in all of those programs, with the Clerk of Court's office, and with a host of other legal assistance programs in the county.

Pro Se Assistance Programs in Maryland receive significant support from the Maryland Court of Appeals, its Chief Judge, and the Administrative Office of the Courts.

Overall History and Description of Programs

The programs to assist self represented litigants (SRLs) in Montgomery County have developed in the context of significant revisions in the way in which family cases are handled. Over fifteen years ago the Maryland legislature considered creating a separate family court with judges and staff dedicated exclusively to family and juvenile cases. The Maryland judiciary opposed the creation of separate courts, but reached a compromise with the legislature – the Court of Appeals would, through internal orders, direct each court to establish a Family Division appropriate to the needs of its county. Family Divisions came into being in 1998. Significant additional state funding has been provided by the legislature and funneled by the AOC to each circuit to assist in enhancing family court services. The Foster Care Court Improvement Project has simultaneously focused attention on juvenile dependency and neglect cases.

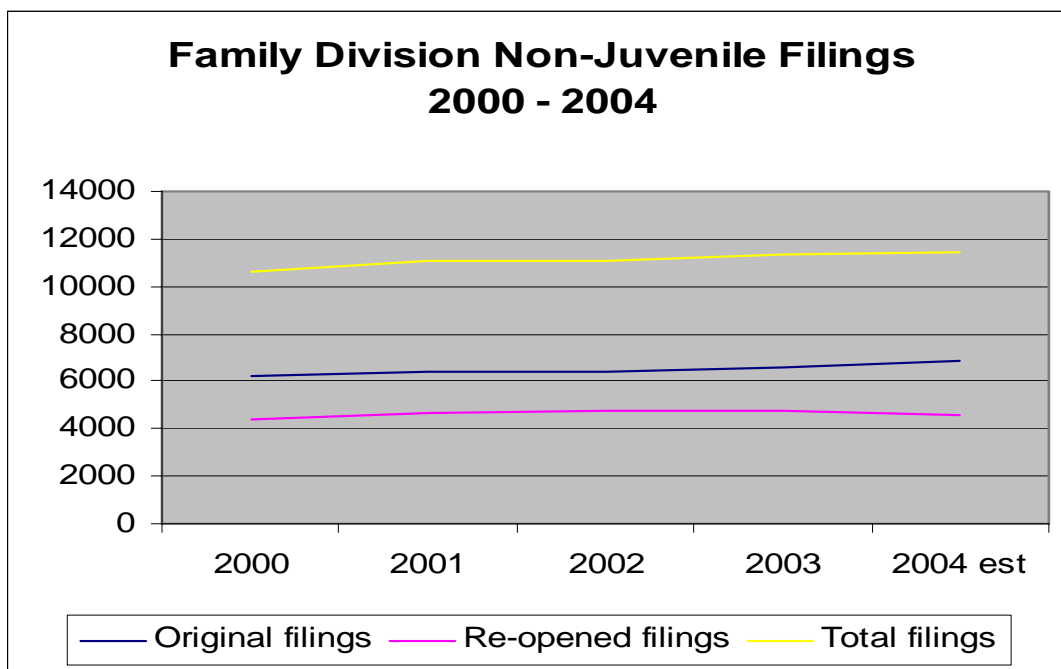
Most domestic violence matters and landlord/tenant and small civil matters involving amounts in controversy up to \$30,000 are handled in Maryland's court of limited jurisdiction, the District Court. The authors did not visit the District Court to view its operations.

In 2002, the Maryland Judiciary marked the maturing of the Family Divisions by publishing Performance Standards and Measures for Maryland's Family Divisions. The Maryland AOC Department of Family Administration produces an annual report of the Maryland Circuit Court Family Divisions and Family Services Programs. The authors have benefited from the opportunity to review these documents.

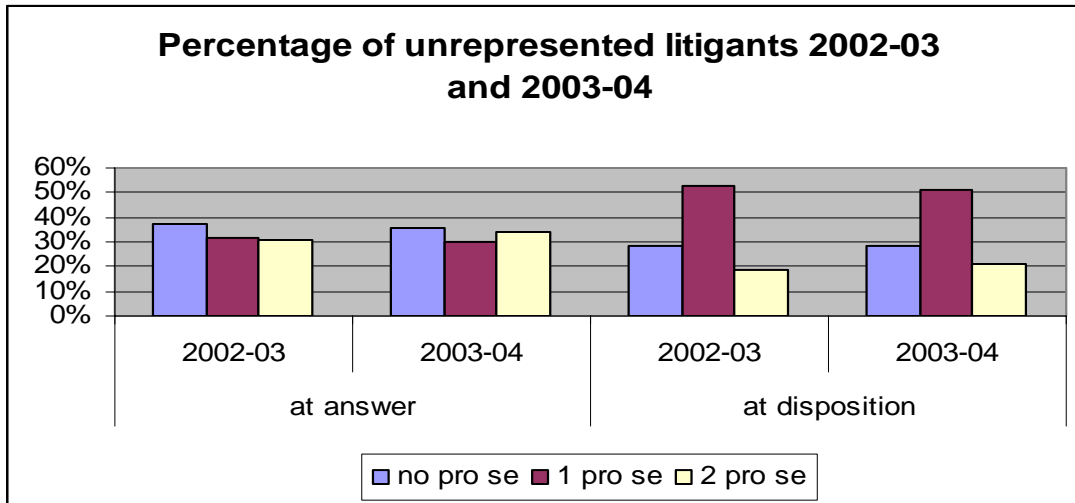
Montgomery County has a population of over 900,000. Its population is growing at the rate of roughly 2% per year. The county has one of the nation's highest median household incomes of \$71,500. Only 5.4% of the population lives below the federal poverty standard. Almost 32% of the population speaks a language other than English in the home (compared to less than 13% for Maryland as a whole). Eleven and a half

percent of the population is of Hispanic or Latino origin (compared to 4.3% for Maryland as a whole). Many newly arrived immigrants, frequently Spanish-speaking, have settled in Montgomery County because the affluence of the community provides employment opportunities as domestic servants, gardeners, and the like. Montgomery County therefore presents extraordinary contrasts – one of the nation’s most well-to-do communities with a surprisingly large number of non-English speaking immigrants.

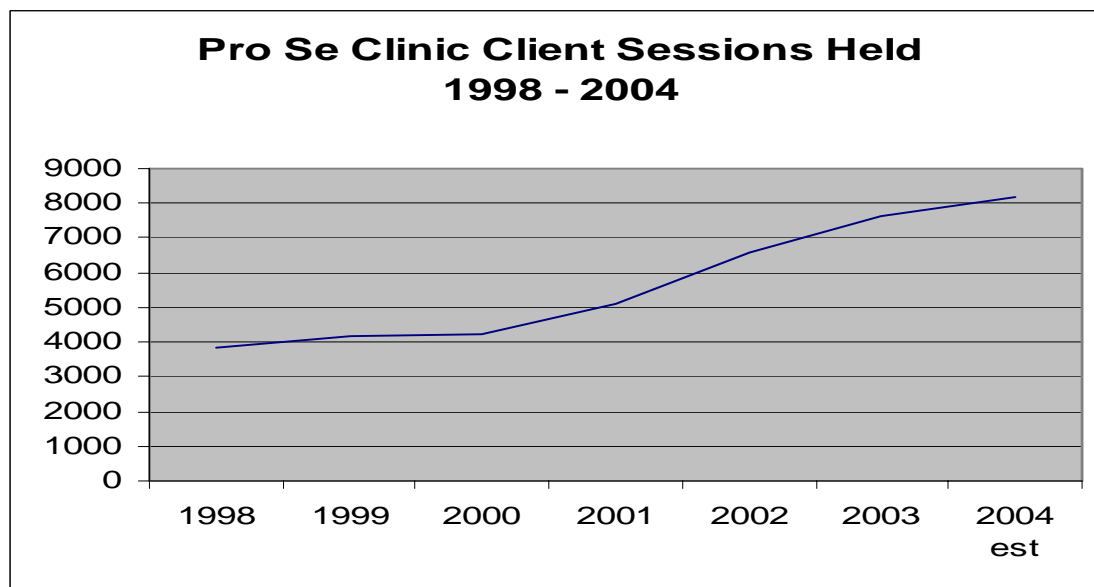
The table below shows that the number of new and reopened family case filings has been increasing very gradually in recent years. It has grown by roughly 800 cases -- a total of 7.5% -- over the past four years. Reopened filings have been flat over that period. The data below does not include child support cases.



The percentage of cases involving self represented litigants has changed very little over the past two years – the period for which the court has kept that data. Last year, 63% of the cases involved at least one SRL at the time of filing of an answer; this year the percentage is 64%. At the time of disposition, the percentage of cases with at least one SRL has stayed the same – 72%. This data should not be interpreted to suggest that persons beginning their cases with lawyers lose the lawyers by the time of disposition. There are many cases in which no answer is filed; self represented litigants are heavily involved in those cases.



By contrast, the number of persons visiting the Pro Se Project has grown dramatically – doubling since 2000.



To understand the operation of the Pro Se Project, it is important to view it within the context of the Family Division’s overall operation.

The Family Division. The Circuit Court has 20 full time judges. The Family Division consists of six judges, lead by a judge in charge. Each week one of the judges sits as the “emergency” judge, hearing domestic violence cases and requests for emergency relief. The other judges hear contested matters. The court rotates its judicial assignments every eighteen months. The family division has two judges who have requested permanent assignment to family cases; the other four rotate.

The court recently absorbed the juvenile court, which was transferred from the District Court. The transition was quite involved, including questions concerning facilities, automated systems, caseflow management, and integration of the juvenile judges from District Court into the Circuit Court rotation process.

The circuit judges are on a master calendar system. Their assignments are made by a central calendaring unit.³ Cases may be permanently assigned to a judge but this is not the norm. In 2002, the court resolved 91% of family cases within one year, compared to the state standard of 90% of cases resolved within that period. 1% of cases remained pending after two years – half the state standard.

The court has five masters. The masters are appointed by the court. Masters have only the power to recommend decisions for approval by the circuit judges. They do not wear robes in the courtroom. They do not have the power to sanction persons for contempt. However, they hear all scheduling conferences, all uncontested divorces and all contested divorce matters that will take a day or less to try. At the end of a hearing, the master makes oral recommendations or takes cases under advisement. Parties have ten days in which to file exceptions. Otherwise, findings made by the master are usually adopted by a circuit judge.

Most SRL cases are resolved by masters. The masters are strongly supportive of the Pro Se Project. Their major complaint is the failure of litigants to appear in court on time. This is particularly a problem with Spanish-speaking parties, who often arrive at court several hours or more after the time set for their hearing, only to learn that the case has been dismissed. The Pro Se Clinic then helps them prepare a motion to reinstate.

The court follows a differentiated case management plan for family cases. The plan follows the general principle that custody matters will be resolved first in any divorce case, followed by property division matters. The purpose of this approach is to prevent one of the parties from using custody as a bargaining tool to obtain unfair property allocation. In particular, a woman is more likely to forfeit property rights in return for custody of the children. Resolving custody matters first eliminates any further opportunity to use custody in bargaining over property distribution.

The differentiated case management plan provides that all cases be assigned to a track, as follows:

TRACK	CASE PROCESSING GOAL
Track 0 – uncontested case in which answer, request for entry of consent order, and proposed order are filed with the complaint	4 weeks from filing
Track 1 – other uncontested cases	30-60 days from the scheduling conference
Track 2 – contested issues involving	Unified trial (both custody and property

³ Unlike other counties we visited, the Assignment Office in Montgomery County answers to the Court Administrator rather than to the Clerk of Court.

custody, visitation, and limited property issues	matters) 20-24 weeks from scheduling conference, following co-parenting classes, mediation, <i>pendente lite</i> hearing, ADR, settlement conference, and custody evaluation if required
Track 3 – contested matters involving custody, visitation, and significant property	Custody trial 16 weeks from scheduling conference, following custody evaluation or assessment Property ADR or trial 32-36 weeks from scheduling conference
Track 4 – highly complex case involving large amounts of property	Assigned to a specific family judge (preferably one of the two permanently assigned family judges) Time is open-ended

Family Division Services has four full time case managers who are responsible for monitoring the progress of all family division cases and for reviewing all files prior to hearings. Active case management begins with the issuance of summons and continues until case disposition. The first file review takes place before the scheduling conference. The case manager prepares a case summary sheet for the master identifying the issues in the case and any problems with documents. If the case has a fatal flaw (i.e., no service) the case manager contacts the party by phone and recommends removal of the case from the calendar. If s/he is unable to reach the party, the case remains on the calendar so that the master can discuss the problem with the party.

If no answer has been filed within the period provided by law, the case manager prepares a written notice to be handed to the plaintiff at the scheduling conference describing the process for obtaining an order of default and a subsequent order of divorce. If the plaintiff takes no action, a follow up notice is sent by mail. Case managers conduct additional file reviews 14 days before a *pendente lite* hearing, 14 days before a settlement conference, and 45 days before trial. If the case manager identifies a defect in the filings or the procedural requirements followed, s/he will call or otherwise notify the affected party in sufficient time to remedy the problem and avoid having to postpone the hearing or trial.

Family Division Services has two other major staff divisions providing services to the courts and the litigants – Mediators and Evaluators. Unlike other counties, these services are provided by Montgomery County at no cost to the litigant.

Five mediators (including one part time Spanish speaker) provide a highly structured dispute resolution process for cases referred by a master, consisting of two two-hour sessions, to help parties resolve the custody issues in their cases collaboratively. Intake takes place the day of the scheduling conference. Roughly 60 % of cases mediated reach agreement. Recently, the court has experimented with mediation of post-judgment matters. That has proved less successful, particularly for child support issues, where the agreement rate is roughly 12%. The project screens cases for the existence of drug abuse,

domestic violence or child abuse. If one of those factors is present in the case, mediation is not attempted. One of the mediators expressed the view that 5% of the cases – the high conflict ones – consumed over 50% of the court's resources. She had no empirical support for her point of view; however, it is worth considering nonetheless.

The mediators do not know how many of the agreements they mediate take effect. The court's policy is that the agreement is drafted and provided to the parties. But the agreement is not signed, so that either or both parties have an opportunity to confer with counsel.

The ten evaluators conduct evaluations and assessments in court-ordered cases involving custody and visitation disputes, adoptions and guardianships. An evaluation includes investigation of collateral sources of information, such as doctors, schools, criminal records, etc. An assessment does not involve collateral sources. The results of both evaluations and assessments are presented orally to the court at the time of the settlement conference. If a self-represented litigant is involved the oral report is presented on the record. A written report is prepared in all cases that have not settled within 2 weeks of trial. This service is provided in only a very small percentage of the cases – only 445 cases per year. However, it does not appear that there is any backlog in preparation of these reports.

The evaluators also present the co-parenting education program – Parent Education And Custody Effectiveness Program (modeled on a program of the same name developed in New York) for parties in cases involving children. The program is provided days and evenings in the courthouse and is offered at no charge to litigants, who are required by court order to attend. The program consists of two three-hour sessions. It uses simultaneous radio transmitter and headphone translation services for Spanish speaking litigants. The nine most frequent additional languages have been added; a second transmitter has been purchased for this purpose.

The Clerk of Court. The office of the Clerk of Court participates actively in the court's program to assist self-represented litigants. Front counter clerks give out forms after discussing the matter sufficiently to be able to decide what form to provide. They will also answer general information questions. The Clerk's Office staff handle most of the public telephone inquiries, answering all that they are able to and referring others to the case managers in Family Division Services or advising the caller to come to the courthouse to meet with Pro Se Project staff.

The Clerk herself is extremely attuned to the needs of the public for assistance from court staff. Among her employees she currently has staff able to speak seventeen foreign languages.

The Pro Se Project. The Pro Se Project began as a project of the University of Maryland law school in 1995. Students of Professor Michael Milleman would come to the courthouse and provide assistance to self-represented litigants. The program suffered from gaps in coverage – during vacations and exam periods in particular. The

Montgomery County bar took over responsibility of the project to remedy those problems. The office was staffed by volunteer lawyers who assisted self-represented litigants pro bono. The program involved a financial qualification process and maintained a list of its clients which it used to prevent conflicts of interest in its representation. In 1999, the court assumed responsibility for the function of assisting self-represented litigants, originally with a single full time lawyer. The court's objectives in assuming responsibility were to ensure continuity in the services provided.

The Pro Se Project requires persons seeking services to complete a screening form providing financial information. The paralegal reviews the forms and checks the conflicts database maintained by the Project. Persons who have earnings exceeding legal services eligibility standards, and persons in cases in which the Project has provided services to the opposing party, are provided only legal information. Other persons are provided limited legal advice, with the Project lawyers entering into an attorney-client relationship with the client. The Project staff assess the client's problem, prepare appropriate forms, and provide guidance on further steps the client should follow. If a case is perceived to be complex, the client is referred to a variety of potential sources for obtaining a lawyer. However, staff do not assist with discovery, only occasionally give advice on trial preparation, and generally do not give strategic or tactical advice on how to obtain an advantage over the opposing party. Clients are required to sign release forms acknowledging that the Project staff will not provide full representation and waiving all liability for services rendered.

Staff report that there is virtually no difference in the services actually performed for the full clients and for those to whom only legal information is imparted.

In 1999 the court-operated Project began with one fulltime attorney and one fulltime legal assistant. Over the years the project added staff to attain its current complement of four – three attorneys and a legal assistant.

All services are provided in person. No telephone inquiries are entertained due to the volume of walk-in clients. All phone calls are taken by the Clerk's Office or the case managers in Family Court Services. Clients are served strictly in the order in which they sign in on a list maintained for each day. Persons waiting to be served sit on furniture in the lobby of the second floor of the courthouse near the Project. If it appears that staff will not be able to meet with all those persons waiting, the Project director will announce that fact to persons waiting, suggesting that they return another day. The graph on page 4 shows the steep growth in the number of persons served by the Project. Project staff are under heavy pressure to limit their time with any one client in order to be able to serve a maximum number of persons each day.

Volunteer lawyers from the local bar fill in to provide program services when staff are on leave, volunteering to work for a half day each. The Project is able to maintain its service level through this mechanism.

The program staff work very closely with the staff of the Clerk of Court. They also work cooperatively with the masters and their staff, with the case managers, mediators and evaluators of the Family Division Support Services, with the facilitators, and with other legal services organizations in Montgomery County.

The Project budget last year was \$280,000, including only salaries and benefits. It served 8157 clients for a per client cost of \$34.33.

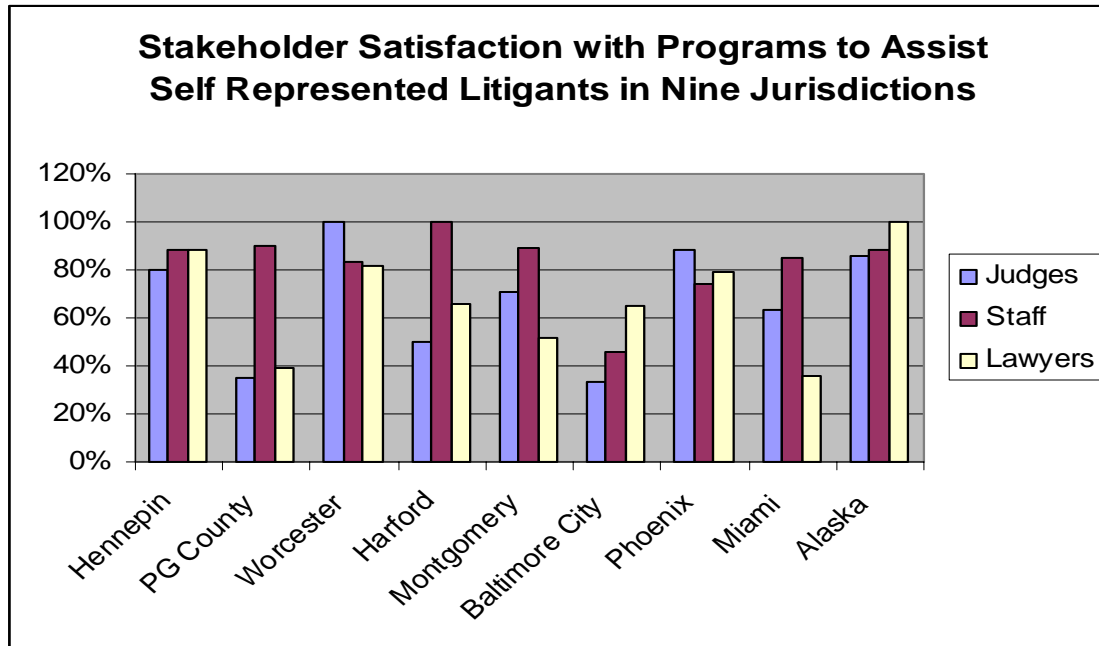
Montgomery County Bar Pro Bono Program. The County Bar runs a pro bono project that involves “Blue” and “Grey” panels – panels of lawyers willing to take cases at no fee and willing to take cases at reduced fee. The financial screening for eligibility is very stringent. Very few family law practitioners are willing to take pro bono cases. This is the largest group of cases for which poor people seek free representation and family bar members are unwilling to take on the full load of this representation.

Legal Aid Bureau. The Legal Aid Bureau does continue to take family cases, particularly those cases involving contested custody issues. The Pro Se Project makes referrals to Legal Aid for those cases in which it believes there is some likelihood of financial qualification.

Results of Stakeholder Research and Data Gathering

Approximately 40 stakeholder interviews, of judges, masters, clerks, bar association partners, court administrators, program staff and bar volunteers, as well as a variety of surveys completed by judges, court staff and lawyers, support the following conclusions:

- The court’s judicial and administrative leadership and bar leadership strongly support the programs to assist SRLs.
- In the surveys, 71% of judges, 89% of court staff and 52% of lawyers said they are “satisfied” or “very satisfied” that the program has made their jobs easier. The satisfaction ratings for all nine jurisdictions studied to date are set forth below. Montgomery County has the third highest staff support, ranks in the middle in terms of judicial support, but ranks third lowest in lawyer support of the nine programs studied.



- Court staff support the project and believe that it has made their work easier.
- Judges reporting observations of SRLs in the courtroom generally reported that they provide completed forms, present evidence and witnesses required, are able to “tell their stories,” and more or less have reasonable expectations. All of these observations were conducted by masters.

Judges responding to questionnaires reported generally that SRLs fail consistently to perform the above functions competently. Two thirds of the judges are satisfied with the Project, although some are ambivalent. Support comes from the perception that greater access to the court is positive and that providing better filings materially helps the court by saving time that would otherwise be spent in wasted hearings that could not proceed because filings are defective. Opposition comes from a sense that the program is good only for simple, uncontested cases involving limited or no property and a perception that the court is representing by sponsoring the program that persons are able to handle more complicated cases without legal representation. Judges opposed to the program also feel that the presence of self represented litigants in the courtroom requires them to depart from their traditional role in the general jurisdiction trial court as a passive arbiter of presentations made by counsel; they also believe that their departures from the traditional role are resented by lawyers. Not all judges share this view; we spoke with one who is completely comfortable dealing with self represented litigants, whether or not one of the parties is represented. Judicial concern about the performance of self represented litigants in their courtrooms is not a valid reason to oppose the Pro Se Project; however, it is nonetheless the case that judges who view self represented litigants negatively also tend to view the Project negatively.

- Self represented litigants themselves report highly favorable ratings of the services provided, both at the time they are received and after a court hearing. The ratings of satisfaction with the program as a whole compare very favorably with those in other courts assessed – generally rated higher than any other court surveyed. The one significant exception is time spent waiting to be served.

**Comparative Ratings of Programs by SRLs in Nine Courts
(5 point scale with 1 being highest)**

Question asked of litigants	Henne pin County, MN	Prince Georges County, MD	Worces ter County, MD	Harford County, MD	Mont- gomery County, MD	Balti more City, MD	Dade County, FLA	Mari copa County, AZ	Alaska
Overall satisfaction with program	1.59	1.45	1.30	1.14	1.16	1.06	1.26	1.61	1.42
Information helped me understand my situation	1.64	1.52	1.52	1.21	1.2	1.30	1.40	1.72	1.42
I know what I need to do next	1.66	1.49	1.52	1.34	1.24	1.32	1.43	1.65	1.42
Staff knowledgeable	1.49	1.35	1.39	1.21	1.12	1.20	1.24	1.57	1.31
Staff listened	1.51	1.35	1.35	1.21	1.16	1.24	1.21	1.50	1.25
Staff explained things clearly	1.54	1.37	1.35	1.28	1.24	1.24	1.28	1.50	1.33
Staff treated me with respect	1.44	1.35	1.30	1.17	1.10	1.14	1.16	1.48	1.29
I did not have to wait a long time	1.77	1.35	1.52	1.59	1.84	1.18	1.21	1.74	1.48
I would recommend the program to a friend	1.48	1.37	1.17	1.31	1.16	1.20	1.22	1.39	1.31

Readers should use caution in using and drawing conclusions from the above table and the table that follows. The results may be affected by the following factors: that the data is drawn from small numbers of surveys (courts were asked to obtain completed surveys from 50 program users, but smaller courts were not able to do so); that some programs provide services only for family law matters and others (e.g., Hennepin County) provide services covering multiple case types; that courts used different data collection methods (who did the interviews, whether they were they identified as court staff members); and that the particular laws and rules of a state impact how complex or simple the forms are, and may therefore impact the customer satisfaction level with the forms and instructions.

Ratings of specific services provided are also very high.

**Comparative Ratings of Services Provided to SRLs in Nine Courts
(3 point scale with 3 being highest)**

Question asked of litigants	Henne pin County, MN	Prince Georges County, MD	Worces ter County, MD	Harford County, MD	Mont-gomery County, MD	Balti more City, MD	Dade County, FLA	Mari copa County, AZ	Alaska
Forms	2.84	2.80	3.00	2.96	2.95	3.00	3.00	2.76	2.89
Written instructions	2.72	2.76	3.00	2.83	2.97	3.00	2.90	2.71	2.81
Staff answer questions	2.90	2.89	2.95	2.92	2.94	3.00	2.90	2.89	2.88
Translation assistance	3.00	2.96	na	3.00	3.00	3.00	2.92	3.00	2.64
Workshop	3.00	2.95	na	na	na	na	2.92	2.75	2.78
Prepare for court hearing	2.77	2.83	3.00	2.63	2.78	na	2.83	2.79	2.82
Following up with court orders	2.80	2.93	3.00	3.00	2.84	na	2.92	2.73	2.83
Educational materials	2.67	2.80	2.80	2.67	2.86	na	2.96	2.86	2.82
Where to get more help	2.83	2.78	2.90	2.83	2.85	3.00	2.93	2.83	2.82
Met with attorney (not court staff)	2.85	2.68	3.00	3.00	2.95	na	3.00	2.00	2.10
Referred to an attorney	2.25	2.74	3.00	3.00	2.77	na	3.00	3.00	2.42
Help using computer	2.33	2.75	na	na	3.00	na	2.93	3.00	2.85
Made an appointment	3.00	2.82	na	na	2.00	na	2.91	2.80	2.50

- The litigants also give very high ratings to the judges for the hearings and trials conducted. The litigants surveyed in Montgomery County came exclusively from proceedings before masters. Although masters hear some contested matters in that county, the cases they hear are nonetheless more likely to be uncontested and simple in nature than cases heard by judges.

Comparative Ratings of Court Processes by SRLs in Nine Courts
(5 point scale with 5 being highest)

Question asked of litigants	Henne pin County, MN	Prince Georges County, MD	Worces ter County, MD	Harford County, MD	Mont-gomery County, MD	Balti more City, MD	Dade County, FLA	Mari copa County, AZ	Alaska
Felt prepared	4.19	4.21	3.00	4.13	4.63	4.12	3.57	4.54	3.60
Judge treated you with respect	4.66	4.79	5.00	4.36	4.91	4.45	4.65	4.87	4.86
Staff treated you with respect	4.67	4.91	5.00	4.44	4.91	4.47	4.64	4.77	4.83
Judge cared about your case	4.42	4.52	5.00	4.18	4.74	4.25	4.09	4.53	4.52
Judge treated everyone in court fairly	4.60	4.71	5.00	4.44	4.89	4.20	4.50	4.77	4.62
Able to tell the judge everything s/he needed to know	4.18	4.42	4.25	3.72	4.69	4.01	3.91	4.46	4.52
Did a good job representing yourself	4.02	4.64	4.50	4.12	4.74	4.29	3.65	4.65	3.63
Understood the words used	4.61	4.91	4.00	4.38	4.81	4.49	4.39	4.55	4.66
Can explain the outcome of the hearing	4.87	4.26	4.25	4.41	4.81	4.36	4.09	4.57	4.64
Outcome favorable	3.76	4.53	4.00	3.85	4.84	3.74	3.45	4.67	4.27
Judge's ruling fair	4.18	4.62	4.00	4.19	4.89	3.97	3.77	4.62	4.64
Satisfied with what happened today	4.08	4.48	2.00	3.92	4.89	3.81	3.68	4.61	4.18
Do you have more respect for the court system	3.79	4.09	4.00	3.49	4.80	3.73	3.62	4.33	4.38

Readers should use caution in using and drawing conclusions from the above.
The results may be affected by the following factors: that the data is drawn from small numbers of surveys (courts were asked to obtain completed surveys from 50

program users, but smaller courts were not able to do so, viz Worcester County, MD which collected only four surveys); that the surveys may have been conducted of litigants coming from different sorts of hearings (for instance, the Maryland data came exclusively from family law matters while the Hennepin County data came from multiple case types; further, most Maryland courts focused their data gathering on cases before masters, which are likely to be simple and uncontested); that state laws impact the difficulty of proving a case (e.g., Maryland law requires proof that the parties have been separated for a period of one or two years, without cohabitation or intercourse, and corroboration of that proof; other states require no grounds for divorce; consequently one would anticipate more problems at the hearing for an uncontested divorce in Maryland than elsewhere); and that in a small court, one judge's practices might affect the score for the court as a whole (for instance, the Administrative Judge's practice in Harford to limit testimony in perfunctory matters may produce that court's relatively low score for a litigant's ability to tell the judge everything s/he feels the judge should know).

- Lawyers report in the surveys that SRLs do not perform well in the courtroom. Barely one half of the lawyers surveyed report that they are satisfied or very satisfied with the Project. Our discussions with bar leaders are not consistent with the survey results. They report no complaints from bar members about the project or about the court's attempt to assist SRLs. They do not perceive that the judges unduly favor SRLs in the courtroom – no more than they provide assistance to poor lawyers who are jeopardizing their clients' interests. Several lawyers stated that they are advising some of their clients to use the Pro Se Project to initiate their divorce cases and to represent themselves through the scheduling conference. If the matter remains contested, then return to the lawyer and retain his or her services. Lawyers do note that SRLs need the services of lawyers in other than simple cases and that the Pro Se Project does not help SRLs prepare for court proceedings. The primary complaints of the lawyers are:
 - that the masters and judges let SRLs get away with noncompliance with discovery requirements;
 - that SRLs are very difficult persons with whom to negotiate. They are often distrustful of lawyers and refuse to discuss settlement. Some lawyers believe that they must record their offers in writing and have witnesses to oral communications with SRLs. One lawyer suggested that one facilitation session be mandatory for every case involving an SRL and a represented party to encourage discussions during the facilitation and to set an expectation that future discussions will also occur;
 - that the court is too lenient in reinstating cases dismissed for failure to appear;
 - that SRLs repeatedly file child support and child custody modification complaints requiring the represented party to expend additional sums on counsel with no change in outcome; and

- that scheduling conferences are a waste of time when both sides are represented by counsel; scheduling decisions could be made by conference telephone call.
- The Clerk of Court is extremely supportive of the Project. The effective working relationship between the Clerk of Court, judges and masters, and the other administrative staff of the court is one of the major strengths of the Circuit Court.
- The court staff put us in contact with lawyer members of the state legislature and of the county commission. Both reported that very few members of the legislature or the commission are aware of the Pro Se Project or the funding to support programs to assist SRLs. However, those who are aware of the programs, and the legislative and commission staff, are strongly supportive. They suggested that funding for these programs is quite secure.
- Seventy-two percent of the litigants interviewed following a court proceeding reported that they had used the services of the Project. While this usage level is not ideal, it is within a few percentage points of the highest court assessed to date.

The summary of these observations is positive, with two reservations – the judges and the lawyers. Both of those groups view the Project with ambivalence.

Program Strengths

We have identified many strengths of the programs in the Montgomery County Circuit Court.

The Pro Se Project staff are experienced, capable, diligent and effective. In particular, the Project Director is not only an effective leader of the Project team, but is also highly effective in building and maintaining relationships between the Project, the rest of the court, the bar, and community organizations. The physical proximity of the project to the masters' chambers and hearing rooms facilitates the close interactions. The project benefits from continuity of staffing without any signs of staff burnout.

The program provides full time services during all hours that the courthouse is open to the public. The Project produces high quality forms and information. It has very high litigant satisfaction ratings. Its bilingual capability is a critical factor in program success.

The court is blessed with a close, cooperative relationship between the Clerk of Court, court administration and the judges. All court staff – whether in the office of the Clerk of Court or the Family Court Services unit – share a deeply ingrained public service attitude.

Volunteer lawyers from the local bar fill in to provide program services when staff are on leave.

The staff are able to identify cases where attorneys are critical and provide referral information.

The staff are able to direct litigants to other necessary social services as appropriate. This is particularly helpful in family law cases where litigants face a variety of challenges that cannot always be resolved by the court.

The court has a very strong case management program within the Family Division, including file review well prior to court proceedings

The Project enjoys strong support from the court's leadership. It also enjoys strong state level support from the Court of Appeals, from the Chief Judge, and from the Administrative Office of the Courts. That support is reflected in

- Stable, reliable funding. We are assured that the legislature's commitment to continuing support for these programs is solid and reinforced by the Chief Judge's and state judiciary's advocacy on their behalf.
- Mandatory pro bono reporting. The Court of Appeals last year required all members of the Maryland bar to report annually the number of hours devoted to pro bono services.
- Statewide interactive forms. The judiciary's website contains statewide forms, instructions and information sheets for typically used family law matters
- Statewide best practices. The AOC is developing a report recommending best practices for programs to assist SRLs.
- Peoples Law Library. This website, developed by the state's legal services community, includes extensive materials for the SRL, including an innovative assessment instrument to gauge the likelihood that a person can successfully represent him or herself in a family law matter.

Suggestions for Improvement and Enhancement

We have identified a number of general areas in which we believe that improvement is possible. Most of these are amplified in the detailed recommendations appearing at the end of this report.

We suggest that the court rewrite its definition of Pro Se Project services to eliminate any attorney-client relationship between the staff and the litigants. In our view it is inappropriate for a court staff member to take on a representational role with respect to a litigant. We believe that 99% of the services rendered by the project fall within the contemporary understanding of legal information, not requiring an attorney-client

relationship. We provide an example of a contemporary definition of the legal information/legal advice distinction in Appendix C.

It would be helpful if the court were able to use an English language phrase to refer to the Project, abandoning the term “pro se.”

We recommend that Project materials include cautions regarding alimony, pensions, monetary awards, and other property and about including agreements in divorce orders and that staff emphasize these issues when providing information.

The project currently provides limited assistance to litigants in preparing for contested hearings and trials. We recommend that it refer litigants in these circumstances to the materials on the Peoples Law Library website or to other similar written materials available.

It would help the staff and the litigants if they had a quieter, more private space to interact. We understand the limitations on space within the courthouse and believe that proximity to the masters is more important than more privacy.

We recommend increased attention to cases in which SRLs are failing to effect timely service.

We recommend that the state of Maryland provide training to support judges with their changing role in dealing with SRLs.

The staff should continually review court forms, letters, instructions, and checklists for readability and translate instructions into languages other than English

The court should consider adding an opportunity for pre-filing mediation.

The court might consider more consistent staffing of the facilitation program (which might provide pre-filing mediation)

We suggest that the Project staff institute regular meetings with other legal services providers to share information.

The court should consider expanding the services offered to include issues such as guardianship, name change, etc.

To accomplish these enhancements, it will be necessary to add resources to the SRL program.

Specific Programmatic Characteristics

The TCRIC Executive Assessment Instrument identifies eight specific areas on which this assessment must focus some attention.

Goal Alignment

Goal alignment is the extent to which the activities of everyone within the court agrees upon the same purposes, objectives, and values for serving self represented litigants, and pursues them consistently in the course of their everyday work.

The program does have a written goal, contained within the goals of the Family Court Services unit:

Provide means by which litigants become aware of their rights and responsibilities and have access to information to assist them with judicial procedures

This goal is consistent with those that have been articulated at the state level in the Performance Standards and Measures document.

While the judicial and administrative leadership of the court, including the Clerk of Court, fully support this goal, and the staff of the court fully embrace it, there is some ambivalence among the judges and lawyers. So the court has not yet achieved full goal alignment.

Client Groups

As noted above, Montgomery County has become a multi-ethnic community. The Pro Se Project provides excellent services to Spanish speaking citizens of the county. The Clerk of Court has hired bilingual staff with facility in seventeen different languages. The court is to be commended for its efforts to provide multilingual services.

It is not clear that the court has made efforts to inform the various ethnic communities of the availability of court programs to persons who are not fluent in English.

We note that the services of the Montgomery County Pro Se Project are provided to 5.4 plaintiffs for every defendant. The program has gone to significant lengths to ensure that its services are available to both parties in a case. However, there is a need to communicate better the availability of the project's services to defendants in court cases.

Stakeholders

We have discussed the data and observations of various stakeholders previously. The survey responses for judges, staff, and lawyers in the nine courts surveyed are shown

on the table on page 10. Montgomery County is in the middle of the courts studied to date in the satisfaction level of judges. Compared to other jurisdictions studied, it has a low level of satisfaction from the attorneys surveyed.⁴

Emerging Practices

The assessment tool developed by the Trial Court Research and Innovation Consortium includes a number of Emerging Practices against which a court's program should be compared. The table below summarizes the Emerging Practices identified by TCRIC and our observations concerning Montgomery County's use of them. We note that the Maryland judiciary is developing its own Best Practices document addressing Family Divisions as a whole.

Emerging Practice	Montgomery County Status
Easily Understandable Forms and Instructions Forms and instructions written in plain English	The statewide forms process provides a wide variety of forms and instructions written in plain English. We make some recommendations for their improvement below.
Large Type Forms and instructions in larger type.	Such forms are not formally available, but they could be printed out if requested.
Development of a Web Site for Self-Represented Litigants Applicable statutes and rules, extensive instructions written in plain English, downloadable forms, and interactive forms completion programs (where the program obtains the user's input in response to questions and populates the form appropriately based upon the answers).	The court has its own website which links to the state forms website. It also includes a description of its programs on its webpage on the state judicial website.
Other Languages Easily understandable forms and instructions, translated into Spanish and other languages (including Braille) as designated by the county's demographics.	The court has prepared some materials in Spanish, including a form to be handed out at the scheduling conference advising a party of the process to obtain an order of default. This effort should be coordinated with the AOC because there is a statewide need for forms and instructions in languages other than English.
Access at Local Libraries and Community Access Sites Website available at public facilities such	The state court website and the Peoples Law Library are available in public libraries and anywhere that Internet access

⁴ In its comments on the initial draft of this report, the court contends that attorney ratings reflect their view of self represented litigants, not of the Pro Se Project. However, the question on the survey that the lawyers answered asked their level of satisfaction with the program to assist self represented litigants.

as public libraries, city halls, and municipal buildings together with assistance in accessing and using the website	is available.
Attorneys in the Courthouse Attorneys either employed by the court, employed by an outside agency, or working pro bono counsel litigants prior to court appearances.	The Pro Se Project staff provide brief advice and complete forms for persons needing legal information. This advice can be sought at various points during the legal process. However, the Project generally only very limited assistance to self represented litigants preparing for hearings and trials. The staff do make referrals to all sources within the county where free or reduced fee representation is available.
Attorneys in the Courthouse The judge may send litigants out of the courtroom to meet with attorney advisors in order to expedite calendars.	The services of the Pro Se Project are available for referral by a judge or master from the courtroom. The facilitator also makes referrals directly to the Project staff.
Workshops Workshops can be either run by video or live presenters.	The court provides parenting education workshops. It does not provide workshops on the court and legal processes.
Mobile Services Centers Service centers contained in mobile RV units that can be driven to various parts of the jurisdiction	There is no mobile service center, and the evaluators do not recommend one.
Telephone Attendant Decision–Tree Systems can provide telephone assistance to self–represented clients	There is no automated phone service, and the evaluators do not recommend even exploring one. Litigants currently have access to the staff of the Clerk of Court and to the case managers in the Family Court Services unit.
Training Other Court Staff Provides a customer service orientation to all public information components of the court.	There is significant informal interaction among the staff of the Pro Se Project, the staff of the office of the Clerk of Court, and the case managers. We perceive a court-wide dedication to customer service, although, as recommended below, court staff need a clearer understanding of the role and services provided by the Pro Se Project.
Prehearing Screening Process A court staff member, staff attorney (sometimes called a family law facilitator) or a volunteer attorney (sometimes from legal services) reviews the papers prepared by the parties to determine their readiness for consideration by the judge. In some	The case managers screen all cases 45 days before trial and 15 days before scheduling conferences and <i>pendente lite</i> hearings to identify defects in the papers in time to contact the parties and get them to correct them before the hearing.

courts, judges meet with the parties in a prehearing conference to accomplish the same objective and to help with dispute resolution.	
Unbundled Legal Services Providing access to specific legal services on a limited representation basis -- limited to a specific phase or issue in the case.	The Pro Se Project currently provides unbundled legal services. Although the legal services community in Maryland has taken a national leadership role in promoting unbundled legal services, the judiciary has not formally endorsed this form of legal practice. An explicit endorsement would expand legal services to poor and middle class litigants and might address some concerns of judicial officers regarding the need for an attorney to present a case in court.
Community Outreach Providing information about court services and obtaining input from community members about those services and their experiences with the courts.	The court is involved in active outreach to the community through its domestic violence prevention program.
Fully Interactive Forms with on line or otherwise simultaneous Video Help	The state court website provides interactive forms on line. However, the court does not provide litigants with Internet access.
Customer Friendly E-Filing Court-sponsored forms completion process is linked to electronic filing system so that self-represented litigant can file form as soon as it is completed.	The court is not discussing electronic filing at this time. Initiatives will likely originate at the state level. The state judiciary's interactive forms could be used as the basis for an electronic filing process for self-represented litigants.

Statistical and Data Analysis

The court appears to make a consistent effort to gather and use statistics to monitor the performance of its programs. It makes excellent use of its case management system to monitor and actively manage family cases.

Evaluation

The court administrator obtains quarterly reports from every part of the court, including the Family Division Services programs. The senior management meet quarterly to review these reports and to take stock of the performance of the court in every dimension.

The court does not regularly use outside experts to evaluate the court's programs to assist self represented litigants. This assessment is the first such effort by the court. This assessment is highly positive; there seems no need for recurring evaluations although it would be helpful for the court administrator and the director of Family Division Services to review after six months and one year the extent to which the recommendations of this report, as adopted by the Court, have been implemented.

It might also help to provide self represented litigants with a way to provide feedback to the court on its services – through a suggestion box or short postcard-sized service evaluation forms. Providing litigants with a way to provide feedback might produce continuing insights into opportunities for better coordination of efforts.

Strategic Planning

Strategic planning is evident at the state level. The annual report of the Family Division sets forth in very summary form the court's plans for program enhancements. We recommend that the court make better use of the annual Family Division report to develop a fuller statement of goals and objectives for its various program components for the coming year.

Overall Assessment

We find that the court provides a very effective process for providing self represented litigants with assistance in providing and completing forms and giving them general information about court procedures and case status. It alerts litigants to their potential property rights. It advises litigants with complex matters to obtain legal advice and representation and refers them to possible sources of such representation. The program staff work in a highly effective manner with the Clerk of Court staff, with the masters and their staff, with the other programs of Family Division Services, with the Lawyer Referral and Bar Association Pro Bono programs, with the Montgomery County Office of Child Support Enforcement, the domestic violence program and a large number of bar volunteers.

The current program is highly effective for persons with simple cases – i.e. those without property or contested custody issues. The program is not as effective in helping litigants deal with more complex cases. While it succeeds in opening the courthouse door for them by preparing the forms needed for them to initiate a case, it does not attempt to improve their understanding of the rules of evidence, necessary proof required to obtain various forms of relief, or the rules of procedure at the hearing or trial stage.

The program makes a sincere effort to provide assistance to both parties in family cases. It considers the service it provides to be legal advice, so advises its clients, maintains records of all clients seen, screens cases for conflicts, and refers persons on opposite sides of the same case to different attorneys. The service the program provides could more properly be characterized as giving legal information, which would eliminate

the need to maintain and check a conflicts data base and remove any ethical problems associated with serving persons on both sides of the same case.

With the assistance of state judicial leadership, Montgomery County now needs to address the next level of challenges for courts in providing truly meaningful access to justice -- to ensure that self represented litigants are able to effectively work their way through the procedures they encounter within the courthouse and exit from the back door with the legal relief to which the merits of their cases entitle them. The major steps required to meet those challenges are:

- A statewide definition of legal information versus legal advice
- Better articulation of and training for judges to deal with the changed judicial role in the general jurisdiction trial court required to address these cases; and
- Increased assistance to self represented litigants with complex contested family law matters.

Recommendations

Our recommendations are made both to the AOC and state court leadership and to the leadership of the Montgomery County Circuit Court. The first recommendations need to be addressed at the state level.

Create statewide definition of legal information v. legal advice

While staff throughout the Montgomery County courthouse appear to follow a broad definition of legal information, and some staff with whom we spoke (case managers) were able to articulate the difference between legal information and legal advice in a manner completely consistent with contemporary national definitions of those terms. However, it is clear from the confusions within the Pro Se Project staff itself that clarification is needed. That clarification needs to come from the state judicial branch. Were the state to promulgate a contemporary definition and provide training to court staff in its use, the public and litigants would receive considerably more help from more sources within the courthouse.

At least a dozen states have drafted and adopted definitions for judges, staff and the public, setting forth in understandable English the activities in which staff may engage and those that they are prohibited from performing. We include as Appendix C a pamphlet prepared by the California Judicial Council to educate its staff about these issues. We can provide the AOC with other examples upon request.

Address SRL needs in other case types

Forms, instructions, and operational programs are now in place for persons who choose to represent themselves in family law matters. The AOC has also devoted considerable attention to assistance of abused spouses and children in obtaining orders of protection. The state could usefully apply the lessons learned in these efforts to providing similar materials for small claims, landlord/tenant, and criminal cases in the District Courts.

District Court judges are accustomed to the appearance of litigants without counsel; they have well established routines for ensuring that they have an opportunity to present their cases in open court. Consequently, there has been far less clamor for materials in the types of cases that arise in these courts.

Nonetheless, the jurisdictional limit of the District Courts has been increased to \$30,000 recently. This suggests that the potential consequences for litigants have become more serious and that the state judiciary should consider providing at least more written materials for litigants involved in civil matters in the limited jurisdiction courts. As noted above, there are also reports that growing numbers of persons are choosing to represent themselves in criminal cases in these courts. While they have a constitutional right to do so, the judiciary should consider preparing strong advisory materials that will alert such litigants to the potential consequences of self representation in these matters.

Train judges on dealing with SRLs in the courtroom

The Judicial Institute has developed program segments on dealing with self represented litigants. We recommend that they become a standard part of the orientation for new circuit court judges and be provided to all judges embarking on an assignment to the Family Division. The training needs to address the ethical issues that trouble judges in adopting the more engaged judicial role required to deal effectively with these cases and with specific techniques that judges can use in cases involving two unrepresented parties and in the more difficult situation in which one party is represented and the other is not.⁵ It would be helpful if the Court of Appeals could develop a policy statement or supplementary ethical statement covering these issues that judges would be able to rely upon as authoritative.

Review forms, instructions and checklists for readability, the need to add new forms, and translation into languages other than English

⁵ For an example of suggested techniques, see Albrecht, Greacen, Hough and Zorza, *Judicial Techniques for Cases Involving Self Represented Litigants*, The Judges' Journal Winter 2003 Volume 42 Number 1, at 16 (American Bar Association).

The Pro Se Project has developed a number of useful informational handouts. The staff should revised those materials frequently to make sure that they are fully understandable to the persons it is serving. It also needs to make sure that the written information being provided is the same as the information given orally.

We suggest that the staff convene small groups of users – perhaps while they are waiting for service – to review the contents of written handouts and use that input to revise the materials.

The court is beginning to translate some of its materials into Spanish. The AOC has recently awarded a contract to translate all of the statewide forms and instructions into Spanish. Therefore, the court’s translation efforts have addressed and should continue to address its own unique local instructions/guides.

Review and revise state forms to include specific warnings about loss of specific important legal rights, e.g., alimony, pensions, monetary awards, and the division of marital property

As noted earlier, judges and lawyers are concerned that significant numbers of self-represented litigants are forfeiting important legal rights. We recommend changes to state forms and instructions to highlight the following areas:

- Forfeiture of rights to share spousal pensions if not asserted in the complaint or answer
- Notice of tax consequences of the allocation of marital property
- The consequences of divorce proceedings for alimony and home ownership

We suggest that the state consider changes to the divorce forms, the instructions accompanying the forms, the summons, and the notice of default to include clear warnings, stated in understandable English, notifying both plaintiffs and defendants of the potential consequences of divorce proceedings.

Review the statewide mechanism for publicizing and distributing new and updated forms

We encountered some confusion in Montgomery County about the currentness of forms. The AOC might review its procedures for distribution of new forms to make certain that every court is clear at all times about the forms to be used and that each court has in effective internal procedure for seeing that all staff are aware of the new forms, the changes that have been made and why, and that supplies of the new forms are available wherever they may be distributed to the public.

Consider requiring attendance at workshop for cases with property or contested custody issues; develop videotape and on-line workshops that satisfy attendance requirement

We suggest that the Court of Appeals to consider making attendance at an orientation a requirement for representing oneself in some types of family law matters, just as the courts are mandating attendance at approved parenting classes. While attendance might be waived for parties with uncontested cases, and certainly could not be required of defendants choosing not to file an answer, all parties could benefit from a basic understanding of the legal rights resolved during divorce proceedings and the basic court procedures involved.

We would recommend that a statewide orientation videotape and online presentation be created prior to the imposition of such a requirement and that these orientations be provided at no cost to the litigants. Workstations and videos with headphones might be made available for litigants waiting for the pro se project.

While imposition of such a requirement would serve as a barrier to access to divorce, it nonetheless seems to us to be an appropriate balance of the litigant's rights to access with his or her interests in not inadvertently forfeiting important legal rights associated not only with property interests but also with interests in a parent's future relationship with children.

Work with State Bar, MLAN and other stakeholders to develop procedures to allow limited scope representation to encourage attorneys to take cases for litigants with limited resources

The Maryland legal services community has provided national leadership in the development and promulgation of models for providing "unbundled" legal services. And yet the Maryland judiciary has not yet formally endorsed this approach through amendment of the code of conduct for attorneys or otherwise. The staff of the Pro Se Project are clearly providing unbundled legal services (we recommend below that they no longer characterize what they do as providing legal advice). So are other members of the bar who recommend to clients that they commence cases without representation and retain them only for matters beyond their competence, such as contested hearings and trials.

The issue that appears to block approval is whether judges should be required to allow lawyers to withdraw from representation after they have entered an appearance in court, based upon an agreement between the litigant and the lawyer to limit the lawyer's representational obligation to a particular hearing or trial. It appears to us that the advantages to litigants from being able to afford limited legal representation far outweigh the risks of abuse of such arrangements by unscrupulous lawyers in the future.

The remainder of these recommendations are addressed to the Montgomery County Circuit Court:

Rewrite program definition and materials to eliminate attorney-client relationship between staff and litigants

We are not aware of any other court program in the nation where court employees purport to enter into an attorney-client relationship with a litigant. We believe that such an arrangement is inappropriate. The court and all of its employees are required to maintain neutrality and impartiality in their dealings with all parties who come to it in any capacity – for information or forms or decisions or orders. Entering into an attorney-client relationship – requiring loyalty to the pursuit of the interests of a client – is inconsistent with that standard of impartiality towards all parties in a case. All other court programs of which we are aware limit their staff to the provision of legal information.⁶

However, we believe that the services provided by the Pro Se Project fall within the contemporary definition of legal information. Providing information about the law and the court's procedures, providing appropriate forms, and even completing those forms for litigants (provided that the information included in the form is that provided by the litigant) are all within the definition of providing legal information. Providing strategic advice – telling the litigant what he “ought” to do to further his interests – is not the providing of legal information. We observed an instance in which an attorney in the Pro Se Project urged a client to pursue a particular course of action to gain a tactical advantage over the other party. However, after discussing the incident with the project supervisor, we conclude that this incident was an aberration. It did point out, however, that the supervisor does not closely monitor the work product or performance of the other three staff members of the Pro Se Project. This is understandable given the huge numbers of litigants that the director and attorneys each serve, and the nature of the professional respect given to other attorneys. It is clear that the other staff members respect and often consult with the director. Regular discussions about providing information – and not opinions or advice – would be valuable. While this is not a significant change in the actual practice of the program, it is a shift in concept. The director may also want to institute a procedure of staff periodically sitting in on consultations with other staff members during less-busy times to share notes on how to handle different types of situations.

Creating an attorney-client relationship between the Pro Se Project attorney and the litigant to whom services are provided has created an ongoing tension between the attorneys' ethical obligation to avoid conflicts of interest and the court's obligation to

⁶ It should be noted that some courts contract with attorneys to provide legal advice to self-represented litigants in the courthouse. The Prince Georges County Bar Foundation provides such a program with two part-time attorneys in Upper Marlboro. Two private bar members provide such services in Worcester. A contract attorney performs this role in Harford County Circuit Court. While this poses challenges to the court's neutrality, it may be an appropriate understanding of the relationship between the attorney and litigant. The difference of those three programs from the Pro Se Project in Montgomery County Circuit Court is that the contract attorneys are independent contractors – free from direction by the court in the way in which they conduct their work and accountable only to their clients for their performance. In Montgomery County, the Pro Se Project attorneys are court employees, under the supervision of the court administrator and ultimately subject to the control and direction of the judges of the court.

provide even handed services to all parties. Because it creates an attorney-client relationship with the first party to appear, the Pro Se Project is restricted in the services that it can render to the other side in the case should s/he visit the program. The Project maintains a list of clients for purposes of identifying conflicts. It checks that list for all new clients. When a conflict is spotted, the second client is referred to another one of the Project attorneys and that attorney is expected to provide only legal information, not legal advice. In practice, staff say that the service they provide is virtually indistinguishable. If the Project attorneys are in fact entering into an attorney-client relationship with one of the parties, providing services to the other would generally be a conflict of interest. Merely referring the second client to another attorney in the same “firm” would not avoid the conflict. If the project were to characterize its services as providing only legal information, it would no longer have to deal with the conflicts question because it would not be entering into an attorney-client relationship in the first place. Project staff have expressed the view that they would nonetheless feel squeamish providing information to both sides in the same case. If so, the Project can certainly maintain its current practice of referring the second party to a different attorney – not because legal ethics require it, but rather because the staff prefer it. The Project would not need to maintain a conflicts data base, but staff members would exercise their right to refer to a colleague based on their memory of the case or identification of their handwriting on a document filed by the other side.

Finally, we believe that characterizing the role of Pro Se Attorneys as givers of legal information rather than legal advice is much more appropriate to the situation within which they perform. They are rarely able to spend more than five minutes hearing a client’s “story” and assessing his or her legal situation. In many cases, that is not sufficient to serve as the basis of strategic legal advice. For instance, based on a few minutes discussion, can a Pro Se Project attorney determine what sort of custody arrangement is in the client’s best interests? Probably not. But the attorney can tell the client how to pursue a custody arrangement that the client believes is in the client’s best interests.

The Pro Se Project will have to rewrite its release forms to reflect this changed understanding. The new form should require the person being served to:

- acknowledge that no attorney-client relationship exists between the court staff member and himself or herself;
- that the staff person will not represent him or her in court;
- that statements made to the attorney will not be confidential;
- that the Project attorneys may provide the same services to the opposing party in the same case; and
- that the information provided by the attorney is based on the information provided by the person served. The attorney has not, and will not, independently confirm or supplement the information provided.

We further recommend that the form be provided to the assisted person, explained briefly by the attorney, and signed by the client at the beginning of the session. If the

client reasonably believes that an attorney-client relationship exists at the time s/he imparts information to an attorney, the attorney's subsequent attempt to define the situation as other than an attorney-client relationship, or to impose limitations on the attorney-client relationship, will be ineffective. Limitations on an attorney-client relationship must be established at the beginning of the relationship.

This clarification will be of assistance to judges, masters, and other clerk and court administration staff. It will become clear to them that all parties will be served. Together with a clear statewide policy on the distinction between giving legal information and giving legal advice, it will also become clear to everyone within the court that the role played by the Pro Se Project attorneys is not legally different from that performed by other staff. The attorneys in the project will not be giving "advice" any more than other staff. But the information that they give will be more detailed than that given by other staff because the attorneys have broader expertise and can give competent information on a broader and deeper level than other staff.

In comments provided on the initial draft of this report, the court noted its disagreement with this recommendation. It provided us with a memorandum citing Maryland case law to the effect that an attorney cannot avoid his or her ethical obligations by labeling the advice he or she gives a client as something other than "legal advice." This memorandum is included as Appendix B. The principle cited is consistently applied across the United States. But it does not address the core issue – what activities themselves constitute the giving of legal advice. The pamphlet published by the California Judicial Council, included as Appendix C, may help to clarify the distinctions that we use in making this recommendation, which have been adopted and proved workable and beneficial in many other states as well. They are reinforced by the use of clear waiver forms whenever an attorney working on the staff of a court provides assistance to a litigant.

Change name of project to a term other than "Pro Se"

One of the aspects of court processes that confuse and aggravate self represented litigants is the use of specialized legal terms, often in Latin or French, that have no meaning to the ordinary citizen. "Pro se" is one of those terms. Its meaning is not apparent to the citizen-litigant. "Family Law assistance project" might be a more understandable name for the project.

Review court forms, letters, instructions, and checklists for readability and translate instructions into languages other than English

The project has developed some standard handouts for areas of the law that are hard for litigants to remember without written aids. We reviewed two of them dealing with service of process and preparation for a hearing in an uncontested divorce case.

They contain very useful information. We believe that they could be made less technical in their language. We suggest that the project use groups of persons waiting to be served as focus groups to test understanding of the project's written materials and revise them in light of the feedback provided.

Institute regular meetings with other legal services providers to share information

The Pro Se Project maintains excellent relationships with related agencies. However, based on California experience, we recommend a monthly meeting of representatives of the following organizations to share information, identify problems and fashion common solutions:

- Legal Aid Bureau
- House of Ruth (domestic violence advocates)
- Pro bono program
- Lawyer referral service
- Montgomery County Office of Child Support Enforcement
- Mediation Unit of Family Division Services

Expand role of Pro Se Project to include materials to inform SRLs with contested hearings of the issues to be addressed and the sorts of evidence needed to prove them

There are a number of steps that the court could take to better prepare SRLs for court appearances, including basic courtroom protocols, lists of the legal elements that must be proven to obtain relief and the sorts of evidence that can be used to prove them, and suggestions that litigants observe hearings and trials in other cases. Some courts have videotaped proceedings for this purpose.

Statewide materials are available on the Peoples Law Library website. Court staff can refer litigants to those materials. Staff may also take advantage of existing materials – such as the manual prepared by The Women's Law Center of Maryland and the Maryland Commission for Women⁷ – to assist litigants to prepare better for hearings and trials involving contested matters.⁸

⁷ Women's Law Center of Maryland, Inc, Legal Rights in Marriage & Divorce, Second Edition (2001).

⁸ Court staff might also gain inspiration from the Alaska Family Law Self Help Center website; this site has been developed by court staff in Alaska expressly for the purpose of assisting unrepresented litigants involved in contested divorce and custody cases.

Expand services provided to other case types, including guardianship, adoption, name changes, and perhaps respondents in domestic violence cases

Forms, instructions, and operational programs are now in place for persons who choose to represent themselves in family law matters. The Pro Se Project has requests for assistance with other types of cases, including guardianship, adoption, and name change. If the project had additional resources, it could address these matters.

The court currently provides advocacy for victims of domestic abuse. The House of Ruth does not provide assistance to respondents in those cases. Evenhandedness requires that the court develop some means of advising alleged abusers of their rights and the procedures for contesting the allegations against them. There is also some indication that defendants who have the opportunity to get information about the court process will be less likely to violate temporary restraining orders. This information would include the importance of following orders and appearing in court. It would also assure them that they will be able to present their side of the story. It is possible that this service might be provided by the Pro Se Project, which on occasion meets with parties on both sides of domestic violence cases today.

Provide additional resources for the program

As noted above, the Pro Se Project will need additional staff if it is to take on additional types of matters. The staff is hard pressed to handle all of the matters that litigants bring to it now. The project could use an additional attorney or paralegal. The project might consider trying to recruit retired lawyers interested in working one day a week to supplement staff resources. This assignment might be very attractive to lawyers who have made a good living from the profession and want to give something back to the community. For the most part the clients are attractive – in that they have pressing legal problems needing assistance but the volunteers would have no continuing obligation to the persons they assisted – making the role one that retired persons might be very comfortable performing.

Provide a printer for Shelley and Elinor

One small, practical improvement that would be immediately helpful would be an additional printer on the side of the “island” of cubicles where Shelley and Elinor have their office. Today there is only one printer – located immediately outside Avi’s office, and a significant walk from Elinor’s office on the other side of the “island.” If they had a printer close to their cubicles, Shelley and Elinor would be able to provide written materials to more of their clients.

Consider tools to assist at scheduling conferences such as calendars at counsel table, new form for dates with description of services beside them, referral slips for pro se project with notation of reason for referral

We noticed that during scheduling conferences held by the masters, self represented litigants often reached a point of information overload – earlier for some than for others. When the master asked about the suitability of dates, the lawyers were able to refer to their own calendars; the litigants had no calendar to which to refer. It might therefore be helpful to have “year-at-a-glance” calendars at both conference tables for all scheduling conferences.

The parties leave a scheduling conference with a handful of orders, each containing the date or dates for specific events. Though the masters describe each program or event to the litigants orally in the course of the scheduling conference, the written orders do not contain descriptions. Attachment A is a suggested form that the court might consider using to combine in one place:

- all dates scheduled for the case
- brief descriptions of the scheduled events
- their time and location

Finally, we suggest that the court have a form for judges, masters and facilitators to use to note for the litigant – but more importantly for the Pro Se Project staff – the purpose for which the judge or other court official has referred the litigant to the Project. This could be like a doctor’s prescription pad, with the purpose of the referral noted longhand by the judge, master or facilitator and handed to the litigant to take to the Project. The Pro Se Project staff could use the same form when it refers a party to the county law library.

Distribute to judges, masters and facilitators a form on colored paper to request immediate assistance for a particular litigant, for the purpose of completing a proceeding on the same day

We further suggest that the “doctor’s prescription” form contain a check box or a different form be available for the judge, master or facilitator to request immediate assistance for this litigant. This form would entitle the litigant to “go to the front of the line” of persons waiting to be served by the Project staff. The purpose would be to have some form or document prepared that would allow completion of a proceeding the same day. The savings of court and litigant time arising from completing a matter on the date originally scheduled are significant. Project staff are leery of this proposal, fearing that litigants who have been waiting for their appointment will create a disturbance if persons are allowed to “cut in line.” If disturbances result from the new practice, it should be discontinued.

Provide quiet, more private space for program staff if possible; contiguity with masters hearing rooms is paramount

The Pro Se Project is housed in a group of four “cubicles” with walls that rise roughly six feet. Conversations that take place in one of the cubicles can be heard in the others. The Project staff are used to these accommodations and do not complain of them. However, their clients would feel more comfortable if they had more privacy in their discussion of matters which often involve some very personal information.

However, we believe that the co-location of the Pro Se Project with the master’s chambers and hearing rooms is of higher importance to the success of the program than enhanced privacy in the staff’s accommodations. The very regular interaction of Project staff with masters and their staff is one of the most impressive features of the program – ensuring that the services provided to Project clients are in fact meeting the needs of the officers who have the greatest interaction with self-represented litigants.

We are aware of the shortage of space in the courthouse and the probable consequence that the Pro Se Project will remain in its current location. However, it would be possible to provide the staff with cubicles with higher walls to enhance privacy for them and for their clients.

Better signage on 2nd floor including map, listing hearing room numbers for masters on screen

We are told that unrepresented parties have difficulty locating the masters’ hearing rooms and that Pro Se Project staff receive many requests for directions which would be obviated by better signage. The screens listing cases and their locations all give the same room number for the masters. They are all in one wing of the courthouse on the second floor, but their hearing rooms have separate designations – which should be added to the location shown on the screen.

Follow through with current plans for enhanced case management for SRL cases

The Family Division Services unit has recently instituted the practice of printing out a notice for the master to give a self-represented litigant in cases in which the defendant has been served and has failed to file an answer within the period allowed by law. The notice gives instructions for obtaining an order of default and proceeding to get an order of divorce. It also directs the litigant to seek help from the Pro Se Project in preparing the required documents.

We commend the staff for devising this process. We also recommend that the staff institute a process for sending a letter to the plaintiff when the period for service of the summons and complaint has expired without the filing of an affidavit of service. Merely waiting the 120 days provided in Rule 2-507 and notifying the plaintiff of the court's intention to dismiss the case is not a helpful process for self-represented litigants – who need more timely and specific guidance when their cases do not proceed as they should.

Enhance availability of automation to litigants through link to state court website and Peoples Law Library

The only place within the courthouse where visitors have access to computers is in the Law Library. The Law Library does not provide access to the Internet, fearing that it would be misused. The result is that there is no place for unrepresented litigants to go to access the fillable forms available from the state court website. We believe that staff of the Pro Se Project could give direction to some (but clearly not all) clients to fill out their own forms, if computers were available for their use in doing so. Perhaps another cubicle could be added to the Project in which Internet capable computers, with printers, could be located to be used by computer literate clients to complete forms for review by Project staff.

Provide an opportunity for pre-filing mediation

The Montgomery County Circuit Court provides many opportunities for litigants to resolve issues in their family law matters amicably, including the mediation service provided by Family Court Services, the facilitators, and the role of the masters and judges in facilitating voluntary settlement of cases. The Pro Se Project often encounters litigants with matters that would benefit from mediation before a complaint is filed. If both parties are present in the courthouse, or one party could be convinced to bring the other party to the courthouse that same day or on another day, the services of the facilitator could be employed to resolve custody and property matters before a complaint is filed. It would be possible in that instance for the parties to file the complaint and answer simultaneously and proceed immediately to a court order for temporary or absolute divorce, as the circumstances of the parties dictate.

In our observations and our interviews with facilitators, we became aware that additional time is available on most mornings for facilitators to handle additional cases.

Consider consistent staffing of facilitation program (which might provide pre-filing mediation)

The facilitation program is staffed by attorneys who agree to be available for a day a week to deal with cases referred to them, with compensation based on the number of cases they handle. Each facilitator approaches the task from her or his background and experience. Some use a directive approach – providing parties with a professional assessment of the likely response of a judge to their positions to provide them with more realistic expectations and consequently a greater willingness to compromise. Others will only facilitate the parties’ reaching agreements on their own terms.

While there are some advantages to these differences (one facilitator said that she would purposefully refer cases to a directive facilitator when a party in a case needed an attitude adjustment, even though she would not use that style herself), the result is that the court does not provide consistent services for all litigants. The court might consider whether a particularly effective facilitator would be willing to work full or increased time in this role.

We suggest that the facilitator process could fruitfully be used for pre-filing mediation.

Written policy on what is an emergency to help provide back up for program

Project staff are often the first step in the process of screening emergency petitions. They have the role of explaining to litigants who seek their assistance in preparing such petitions whether the litigants’ situations qualify for emergency consideration. They would be helped if they could read to the litigants an official court policy articulating a standard for what is an emergency.

The Project staff cannot ultimately prevent litigants from filing an emergency petition with no or insufficient basis. But they can be more effective in discouraging litigants with inadequate grounds – and thereby saving the time of judges and chambers staff – if they had an authoritative statement on which to ground their discussions with potential litigants. Such a policy would also be of assistance to attorneys who practice before the court.

Develop procedure to ensure that SRLs who have reached parenting agreement in mediation sign it (possibly a clause allowing either party to void it by filing with the court a written rescission within 30 days)

When the court began its current mediation process it encountered pressure from the family law bar to have attorneys participate in the mediation sessions themselves. The presence of attorneys would, of course, undermine the effectiveness of mediation. The court reached a compromise with the bar that agreements reached would not be

signed by the parties – according them an opportunity to consult with counsel before signing an agreement that might forfeit important rights. Absent signatures of both parties, these agreements are confidential and may not be used for any purpose in the case. (We observed a court proceeding in which counsel unsuccessfully attempted to introduce such an unsigned agreement.) Unrepresented litigants often lack the discipline to follow through with execution of these documents; they rarely will sign them without knowing that the other party reciprocated; they usually avoid further contact with each other. Consequently, much of the good work of the mediation unit is dissipated.

We recommend that the parties sign the standard mediation agreement form before they leave the mediation session. In order to preserve the role of counsel in reviewing such documents, we suggest a clause making the agreement voidable within 30 days upon the filing of a formal rescission by either party. That would create a process sufficient to know authoritatively whether the agreement remains in effect.

Consider including a sentence in the parenting agreement requesting that the court enter a consent order incorporating the agreement

We further recommend that all parenting agreements include a sentence requesting the court to enter a consent order incorporating the agreement. This will allow the court routinely to enter orders giving effect to the will of the parties.

Conclusion

The entire Montgomery County Circuit Court should be proud of what it has achieved in its services to self-represented litigants. The Court has a sophisticated program that addresses multiple aspects of the needs of self represented litigants. It is highly integrated with the other offices and services of the court. Its staff, especially its Director, Avi Sickel, have a great deal to offer to other programs throughout the state and the nation.

This report suggests ways that the programs of the court can be even more effective. We note that many of them will require the provision of additional resources. Investments in these sorts of efforts are ultimately cost effective for the court, in that they save judge, master, and staff costs in the long run.

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Appendix A: Suggested format for Scheduling Conference Report

DATE AND TIME	WHERE TO GO	EVENT
Today	Room 10, Circuit Court Law Library, third floor at the top of the escalator in the Judicial Center	Facilitator – an informal meeting with an attorney who will help you reach agreement on some or all of the issues in your case that are currently in dispute. Your lawyer may attend and participate.
Today	Family Division Services, Room 220, Judicial Center, second floor by the escalator	Complete Confidential Parenting Mediation Questionnaire - fill out blue form providing background for mediation about custody and visitation of your children.
June 16, 2004	Court Clerks Office, Family Law Counter first floor, Judicial Center	Deadline for filing financial statement – Maryland Rule 9-202 requires you to submit this form for child support. If you don't have a lawyer, you can get help with this form from the Pro Se Project – second floor of the Judicial Center
July 13, 2004 5:30 to 8:30 pm and July 20, 2004 5:30 to 8:30 pm	Fourth floor, Judicial Center, 50 Maryland Avenue, Rockville, MD	Co-Parenting Skills Enhancement – two three hour sessions to inform you of the impact of your separation and divorce upon your minor children and steps you can take to reduce their pain and discomfort and prevent long term emotional damage. Your lawyer is not required to attend.
July 20, 2004 10:00 am to 12:00 pm and July 27, 2004 1:30 pm to 3:30 pm	Family Division Services, Room 220, Judicial Center, second floor by the escalator	Mediation – two two hour formal sessions with a trained mediator who will work with each party individually and together to find areas of agreement and help the parties resolve issues concerning custody and visitation with your children. Your lawyer may not attend.
August 3, 2004 1:30 pm to 4:30 pm	will be scheduled before a master in one of the hearing rooms in Room 207 on the second floor of the Judicial Center	Pendente lite hearing – a hearing at which both parties will be allowed to present evidence on the issues of child support, alimony, access to the marital home, attorneys fees and suit money. At the close of the hearing, the master will prepare a proposed order governing these matters temporarily until your case is decided. If you have a lawyer, that lawyer must attend.

Appendix B: Memorandum on Attorney-Client Relationships

Background:

As the result of a recent study of programs providing assistance to self-represented litigants, evaluators John M. Greacen, Esq. and Bonnie Rose Hough, Esq., issued a draft report⁹(hereinafter the Greacen/Hough Report). Among their conclusions was that the Pro Se Project revise its program definition and materials to eliminate the possible formation of attorney-client relationships between staff lawyers and litigants seeking assistance.

Questions Presented:

1. When and how is the attorney-client relationship established; and
2. How may an attorney limit that relationship?

Discussion:

The question of whether or not an attorney-client relationship has been formed typically arises in the context of alleged malpractice, as well as in the applicability of attorney-client privilege. Existence of an attorney-client relationship is traditionally evidenced by the existence of a contract or retainer agreement. That the relationship may also arise by implication is well settled law in Maryland and elsewhere. (See [*Board of Overseers of the Bar v. Mangan*, 763 A.2d 1189, 1192-93 \(Me.2001\)](#); [*State v. Gordon*, 141 N.H. 703, 692 A.2d 505, 506 \(1997\)](#), cited with approval in [*Attorney Grievance Commission of Maryland v. Brooke*, 374 Md.155](#)).

The test reiterated in [*Brooke*](#) is as follows:

Many courts have adopted the following standard to assess whether the relationship has been established: An attorney-client relationship is said to have been created when (1) a person seeks advice or assistance from an attorney; (2) the advice or assistance sought pertains to matters within the attorney's professional competence; and (3) the attorney expressly or impliedly agrees to give or actually gives the desired advice or assistance. ([*Id.*](#) at 174).

The case also defines a client as, "...one who is either 'rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from him.' " ([*Id.*](#) at 173, *internal citations omitted*).

The fact that services are rendered without payment or expectation of a fee offers no protection from the inference of the development of an attorney-client relationship:

Although an agreement upon the amount of a retainer and its payment is rather conclusive evidence of the establishment of the

⁹ JOHN M. GREACEN, ESQ., BONNIE ROSE HOUGH, ESQ., TRIAL COURT RESEARCH AND IMPROVEMENT CONSORTIUM, REPORT ON THE PROGRAMS TO ASSIST SELF REPRESENTED LITIGANTS OF MONTGOMERY COUNTY CIRCUIT COURT OF THE STATE OF MARYLAND, DRAFT REPORT (JULY 2004).

attorney-client relationship, the absence of such an agreement or payment does not indicate conclusively that no such relationship exists. Indeed, the payment of fees is not a necessary element in the relationship of attorney and client. The services of an attorney to the client may be rendered gratuitously but the relationship of attorney and client nonetheless exists. ([*Central Cab Co. v. Clarke*, 259 Md. 542, 550 \(1970\)](#) and citations therein.)

The Greacen/ Hough Report implies that staff lawyers of the Pro Se Project might avoid the implications of the attorney-client relationship by referring to their help as “information”. The Court of Appeals has taken a dim view of analogous attempts made by respondents to limit their culpability in disciplinary proceedings by claiming they were not practicing.

For example, one such respondent, Brigitte Harris-Smith, admitted to the Pennsylvania and Virginia bars and the Maryland federal district, but not to the Maryland bar, attempted to “pinpoint” her Maryland practice by limiting it to federal bankruptcy cases involving “prescreen(ed)” callers. In the event a prospective client had issues involving representation in a Maryland state court, she referred the matter to a colleague admitted in Maryland.

The continuing violation in this case is the unauthorized practice of law. It results from Smith's attempt to practice within the limits of her admission to the bar of the federal district. That attempt was unsuccessful *solely at the beginning of the process, when Smith analyzed the problems presented by those who sought her services and advised them how to proceed.* ([*Attorney Grievance Commission v. Bridgette Harris-Smith*, 356 Md. 72, 90.](#))

With regard to the question of whether an individual’s activities may be considered practicing law, the Court of Appeals has said,

...the focus of the inquiry should "be on whether the activity in question required legal knowledge and skill in order to apply legal principles and precedent." ("Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer."). "Where trial work is not involved but the preparation of legal documents, their interpretation, the giving of legal advice, or the application of legal principles to problems of any complexity, is involved, these activities are still the practice of law." In that case, the respondent's conduct was directly related to the preparation of a legal document and advice related thereto. As indicated above, the conduct was taken within the scope of an attorney-client relationship. ([*Brooke, supra*, at 176-177](#), internal citations omitted).

As to whether an attorney may limit the range of services he or she provides for a client, the Court has expressed approval for that proposition with regard to the issue of third party liability:

‘...the attorney should be able to control the scope of the representation and the risks to be accepted....In threatening the interests of the attorney, the interests of potential clients may also be compromised; they might not be able to obtain legal services as easily in situations where potential third party liability exists.’ ([*Walpert, Smullen & Blumenthal, P.A. v. Katz, et al.* 361 Md. 645, 663\(2000\)](#), citing John H. Bauman, *A Sense of Duty: Regulation of Lawyer Responsibility to Third Parties by the Tort System*, 37 S. TEX. L. REV. 995, 1005-06 (1996)).

Clearly, it is not forbidden for non-lawyers to assist in the filling out of forms or to provide information regarding the existence of legal rights. Indeed, "...where pure engineering, accounting or clerical work is involved, the practice of law is not present, and in these latter areas the layman can adequately perform. ([*Lukas v. Bar Ass'n of Montgomery County, Maryland, Inc.*](#), **35 Md.App. 442, *448** (1977)).

Conclusion:

The services typically rendered by lawyers of the Pro Se Project constitute the practice of law in the form of advice to clients. The salient issue as to whether the attorney's consultation with pro se litigants has yielded information as opposed to advice is not what wording is included in a waiver, but whether the person seeking advice or assistance is given guidance, information, direction, or strategic suggestions relating to matters within the staff lawyers' professional competence.

Appendix C: “May I Help You? Legal Advice v. Legal Information” Judicial Council of California, 2003